

IN GROUND THREE OF MY HABEAS PETITION I ALLEGED

The voluntary appearance of the Prosecutor and his Chief Witness in a fictitious reenactment on National T.V. prior to trial was a Denial of Due Process, The Right to a Fair Trial as is guaranteed to me by the Fifth, Fourteenth Amendments as well as provisions of the Sixth Amendment and also the Maryland Constitution.

On pages 24-25 of Judge Cadigan's memorandum/opinion he incorrectly stated that I had waived this issue by saying:

"Again the petitioner could have raised this issue on Appeal but neglected to do do asserting ineffective assistance of counsel."

Judge Cadigan also incorrectly agreed with Judge Howe's finding at the Motion to Dismiss Hearing by saying that I could have "corrected" any prejudice by voir dire. Judge Cadigan said:

"As stated above, a proper voir dire examination would have alleviated any possibility that a juror would have been exposed to any prejudicial information regarding petitioner's case. There is no evidence presented at the postconviction hearing that supports the claim that the petitioner was denied due process or a right to a fair trial by the State's Attorneys's participation in the Unsolved mysteries video. A bald allegation unsupported by the record is not an appropriate basis for postconviction relief. For these reasons the petitioner's request for postconviction relief to GROUND THREE is denied."

In my ORIGINAL PETITION I had asserted that The Constitution of these United States as well as the Maryland Constitution prohibits pretrial reenactments of factual issues that should only be developed within the sanctity of the courtroom. The purpose of determining the truth is to inside the courtroom. It is a "sine qua non" of a fair trial, and a basic requirement of Due Process. In the instant case, a television producer was able to disturb the facts of the case by having a hired actor fictitiously portray a "gun" pointed at the State's witness.

GROUND 3-1

SCANNED

I am sure that No Federal Prosecutor would ever be allowed to take part in any pretrial reenactment on National Television. I am also avering that the State prosecutor should be held to the same standard. Any participation of a State or Federal government official could only result in prejudice to any defendant's case. I also believe that the U.S. Supreme Court cases that I cited in my ORIGINAL petition take precedent over Judge Cadigan's opinion. Those cases were Sheppard v. Maxwell 86 S.Ct. 1507, (1966), and Estes v. Texas 85 S.Ct. 1507, (1966). BOTH CASES have been clearly established federal law which Judge Cadigan and the Attorney General have failed to recognize and have been in effect for many years.

The procedure employed by the Prosecutor in this case was a fraudulent portrayal that the whole nation was subjected to. I do not believe that the State can be allowed to use the power of their office, their influence, and their resources to take an active part in and portray a fictitious version of factual events as the State claimed them to be, and would like the television audience to believe. This would also contaminate a prospective jury pool who may have seen the program.

It would and in this case it did set the stage in the advantage of the prosecution by allowing one of the hired actors to vividly portray a "gun" being held to the head of the State's witness when there was never any gun.

This "gun" would have led any television audience or potential jury member to believe the charge of "kidnapping". The television audience was subjected to a Famous Actor introduce the program as a "reenactment", in which the state took an active role by participating. Judge Cadigan as well as the Attorney general fail to recognize that the prosecutor speaks for the state, and his actions could have influenced prospective jurors who may have seen it when it was televised and believe what they saw was factual.

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On November 24, 1997 Judge Howe presided over a Motion To Dismiss Hearing based on Prosecutorial Misconduct, and violations of Maryland Rules (3.6), (3.8). This was LONG BEFORE my trial attorney had any knowledge of the allegations made to him by Officer Rubie on April 02, 1999 which are contained in the five page affidavit by my trial attorney regarding new allegations of prosecutorial misconduct.

On pages 55-56 Anello said: "Sinclair goes on to say the defendant need not prove actual prejudice because on the basis of public policy it will be presumed to exist as a matter of law... We're showing you that the prosecution here has actively, almost joyously participated in the manufacture of pretrial adverse publicity, and that's what the rule was meant to prevent... And when you become involved in a case to the point where you're manufacturing pretrial publicity, without concern appearing in broadcasts... then you become more than an advocate..."

On page 57 Anello said: "Here we can see actual malice and prejudice in the public statements of the State's Attorney Office. Both in the Unsolved mysteries and the statements to the Sunpapers it is a false portrayal of events that occurred, or a portrayal that the State participated in... You have the other problem that, in effect, by creating the pretrial publicity my defendant is being denied his Sixth Amendment right to to a fair trial... the state engaging in violating this rule..."

At page 58 he continued by saying: "You're denying the defendant his right to a fair trial in the Sixth Amendment, the United States Constitution and the Maryland Declaration of rights... I believe the court has to move under the Lykins case and the Young and Sinclair cases to remove Mr. Norman from the case and every member of the State's Attorney Office of Baltimore County and appoint a Special Prosecutor... The fact that those cases deal with conflict of interest is nothing where it's written that the Code of Professional Responsibility rule is any more important to the administration of justice than the fabrication of false pretrial publicity."

Since I do not have any legal training I think it important to once again STRESS that this passionate summary by my trial attorney was presented in court long before we had any knowledge of Officer Rubie's allegations of prosecutorial misconduct at the ballgame on April 02, 1999. In addition I would also like to also STRESS that the transcript of this Motion Hearing was never transcribed until January 2004. This was more than two years after my direct appeal. Therefore my Appellate Counsel could not and did not raise a single issue on direct appeal that was argued by my trial attorney regarding Prosecutorial Misconduct, and violations of the Md. Rules of Professional Conduct. I mention this because it is a part of my argument of Ineffective assistance of Appellate Counsel.

Since this Motions hearing there have been numerous cases in the District Court of Maryland, as well as Fourth Circuit Court of Appeals cases which deal with pretrial publicity. One such case would be U.S. Court of Appeals in re Joseph D. Morrissey, No. 98-4168 decided on Feb. 11, 1999, and No. 02-1105 decided on Sept. 11, 2002. Both cases decided against the offending attorney for violations of pretrial publicity, and one led to his sanction.

Another case was U.S. v. Josephine Gray, decided on Feb. 06, 2002. This case was decided by Judge Chasanow of the U.S. District Court in Greenbelt Md. and involved violations of Md. Rule 3.6 which is equivalent to a Local Federal Rule. Judge Chasanow made the following comments:

"Extrajudicial statements to media by parties, attorneys, law enforcement personnel, and witnesses threatened defendant's fair trial rights and the ability to empanel an impartial jury. Both the Md. Rules of Professional Conduct AND the local rules of this court prohibit a lawyer from making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication...

I would like to also STRESS that Judge Chasanow had used the terms that it was the Extrajudicial statements to the media which in her opinion had "threatened defendants's fair trial rights and the ability to empanel an impartial jury". The same would also apply in the instant case but even more so since my prosecutor took an active part in the production of the program, and allowed his witness to participate in it as well.

Judge Chasanow also stated in her written opinion what effects comments by the prosecutor could have on a potential jury by stating:

"Comment by persons with access to information not yet disclosed in judicial proceedings about those matters set forth in the applicable rules is improper and may well influence prospective jurors. Certainly voir dire will be prolonged and the seating of an impartial jury may be imperiled."

I am sure that the U.S. Constitution does not provide for any prosecutor (State or Federal) to be able to participate in false pretrial publicity which allows only for the State's version to be shown prior to trial which would undoubtedly taint a prospective jury pool.

I believe it also necessary to once again visit Judge Cadigan's statement on page 25 of his memorandum/opinion where he stated:

"There was no evidence presented at the postconviction hearing that supports the claim that the petitioner was denied due process or a right to a fair trial by the State's Attorney's participation in the Unsolved Mysteries video. A bald allegation unsupported by the record is not an appropriate basis for postconviction relief. Tucker v. Warden, 243 Md. 331, 333 (1966). For these reasons, the petitioner's request for post conviction relief as to GROUND THREE is Denied."

I believe this ruling by Judge Cadigan is contrary to established Federal Law that the rulings which I have cited by the Fourth Circuit Court of Appeals demonstrates that Judge Cadigan was in error.

I am attaching additional EXHIBITS that are taken directly from the TRANSCRIPT of the MOTION TO DISMISS HEARING which my appellate lawyer failed to have transcribed during my direct appeal. I am bringing this to the court's attention because I feel that this is just one example of his ineffectiveness. This would mean that he failed to provide the appellate court with a complete record. In addition he also failed to raise a single issue regarding Mr. Norman's violations of the Md. Rules of Professional Conduct 3.6 regarding Pretrial Publicity, and Rule 3.8 regarding the Special responsibility of a Prosecutor.

In addition, I am also submitting these EXHIBITS in order to show this Court that Judge Howe heard the testimony of Mr. Norman when he was called to the stand by Mr. Anello. She was shown the videotape of the Unsolved Mysteries video that both Mr. Norman and his witness had appeared, and yet she RULED that there were NO VIOLATIONS of the Maryland Rules of Professional Conduct by Mr. Norman. I also think it IMPORTANT to state that approximately five days after this hearing, Judge Howe was specially assigned to become the trier of fact. This is when we filed the MOTION TO RECUSE JUDGE HOWE. We had done so for several reasons which were, (1) She ruled there were NO VIOLATIONS of Maryland Rules 3.6 and 3.8 by Mr. Norman. (2) Also because she saw a videotape which disturbed the facts of the case. (3) Judge Howe was exposed to extrajudicial comments by BOTH Mr. Rodricks of the Baltimore Sunpapers, and my ex wife MS. Smith, who gave on camera interviews which were false, and could not be challenged at trial since they had NOTHING to do with the case. (4) Judge Howe was also exposed to a fictitious version of factual events which were in dispute such as the fictitious "gun" being introduced by the Hired Actor, the fictitious "threats", the fictitious "beating", and fictitious "kidnapping" that was presented by the hired actors who were all hired by the producer of the program that interviewed Mr. Norman at the rented house.

My reasons for taking so much time in trying to explain this to the Court is to try and demonstrate in laymen's terms how appellate counsel failed to give me effective assistance of counsel during my direct appeal, and what our reasoning was for filing the MOTION TO RECUSE JUDGE HOWE.



I am attaching EXHIBITS that are copies of the transcript which my appellate attorney failed to have transcribed for my direct appeal. I am doing so because they contain the testimony of the prosecutor Mr. Norman, and the court will be able to see by that testimony that he had no doubt that this program was going to be aired on National Television. I also ask the court to notice that in the next few pages of transcript you will be able to see Mr. Norman acknowledging the following:

- a.) He admitted he was not present when his witness was being interviewed by the Director of the program.
- b.) He admitted that he had no knowledge what his witness was going to say on National television prior to trial.
- c.) He admitted on the record that he was never asked to render an opinion about the facts of the case.
- d.) He admitted that HE WAS THE ONE who told the director of the program that there was a "gun" pointed at Mr. Hogg's head when in fact this was never alleged prior to this time.

I begin with EXHIBIT-6 beginnin at line 9 of PAGE 36 of the transcript:

"He actually flew in from California. He was touted as a director. He sat down with me. He kind of explained how they go about things and specifically to me they don't do script stuff. I asked him that question cause I thought if I was ultimately going to be on television I didn't want to look really really stupid. Just moderately stupid was okay. Said they don't do scripts; they would just interview me, and then at some point in time if they were going to use you know, whatever I had to say, they would put it on televsion. Sometime thereafter your Honor--again I don't remember the days, I was told to appear at a house they actually rented in Timonium--I went up there, sat down. He asked me a bunch of questions. They videotaped it. The next thing I knew it was on the air. But I never contacted them."

EXHIBIT-7 is a copy of PAGE 37 of the transcript. The court can see that my trial attorney had asked if the director of the program had misrepresented anything that Norman told him, and Norman's attorney objected which was sustained by Judge Howe.

Mr. Norman then admits that he had obtained the permission of The State's Attorney for Baltimore County before going on the program, and he also admitted that he had no knowledge how the program was going to be depicted to the television audience.

EXHIBIT-8 is PAGE 38. Mr. Norman was asked if he was involved in the screening of the reenactment. His answer was:

None, whatsoever. There was no rehearsal. I mean show up, answer questions."

"I wasn't even there when Mr. Hogg was being interviewed. And I remember seeing Rodricks at this house they rented, but I wasn't present while anybody was being interviewed."

PLEASE NOTE That Rodricks was the reporter from the Baltimore Sunpapers who had nothing at all to do with the case, and was allowed to give his own "on camera interview". We were never allowed to challenge Mr. Rodricks false and exaggerated statements while on camera. His "testimony" on camera was played to millions of members of the television audience along with the testimony of my ex wife who also had nothing to do with the case. Judge Howe heard each of their statements, and we were never allowed to challenge them in court since they were not a part of the case. Judge Howe heard the entirety of their interviews during the Motions Hearing and became a part of the reasoning for asking for her recusal since we believed these to be extrajudicial statements.

At the bottom of page 38 Mr. Anello then says to Norman:

"So you went on the show stated your piece, which is fairly and accurately represented, what we just saw, not knowing what other people were telling Unsolved Mysteries."



EXHIBIT-9 is a copy of PAGE 39 of the transcript. Mr. Norman admits to Mr. Anello that the director of the program never bothered to ask Norman to render an opinion about the facts of the case.

He also admits that he received a call from Mr. Hogg and Ms. Smith and they discussed going on the program. He goes on to say that he had no problem with them going on the program. And then when he was asked if either of them asked for his permission and he stated:

"No they did not. I couldn't give it one way or the other."

Mr. Norman fails to see that he is responsible for the actions of his witness giving extrajudicial statements. The 4th. Circuit Court of Appeals has had occasions to rule on this in the past, and I cited several of them in my Original habeas petition to this Court. Those cases were U.S. Ct. of Appeals for the 4th. Cir. at 726 F.2d 1007. This was a case involving a suit between the Nazi party and the Ku Klux Klan. Judge Flannery had ruled in part:

"potential witnessed SHALL NOT make extrajudicial statements that relates or concerns or discusses the testimony of potential witnesses...by means of public communication..."

Another case was Prof. Journalists et al v. The Honorable Robert Martin Jr. 556 F.2d 706, 1977. Judge Martin had ORDERED AND PROHIBITED:

- (1) Lawyers and witnesses from making extrajudicial statements.
- (2) Lawyers and witnesses from mingling with the press.
- (3) Witnesses were prohibited from news interviews during the trial period.

The main cases I cited in my ORIGINAL habeas petition were Sheppard v. Maxwell 86 S.Ct. 1507, 1966 and Estes v. Texas, 85 S.Ct. 1628, 1966. Both cases are U.S. S.Ct. cases that have been recognized for more that 40 years as Clearly established Federal law and applies to the Issues raised in Ground Three of my Habeas.

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EXHIBIT-10 is a copy of page 40 of the transcript. Mr. Norman denied that he received any payment but thought he would lend a bit of "humor" to the situation by stating at line 3 that he "Had to fight" for a Hat which said Unsolved Mysteries.

At line 7 Norman was asked by my trial attorney if he saw a depiction of the show, where it was shown that a "gun" was being held to the back of the head of Mr. Hogg, and Mr. Norman states at line 11:

"Yes I did say that".

Then when Mr. Anello tried to point out that this was never alleged in the police reports, and throughout Mr. Norman's own allegations or in the indictment. Mr. Norman's attorney (Mr. Pate) objected, and Judge Howe sustained the objection, and we were prevented from going any further with this questioning. But Mr. Anello did get Mr. Norman to state on the record that it was Mr. Norman who said that there was a "handgun" pointed at Mr. Hogg. I would like to REPEAT that prior to this admission by Mr. Norman this was never alleged until the filming of the Unsolved Mysteries Video that was shown to on national television on two occasions prior to trial.

I now ask the Court to look at my ORIGINAL habeas petition and go to page (8) of GROUND 3. I had quoted the following which I repeat again comes from the Shepard Court and said:

"If publicity during the proceedings threatens the fairness of the trial, a new trial should be ordered. But we must remember that reversals are but pallatives; the cure lies in those remedial measures that will prevent the prejudice at it's inception. The Courts must take steps by rule and regulation that will protect their processes from prejudicial outside interferences. Neither PROSECUTORS of defense, the accused, WITNESSES, court staff nor ENFORCEMENT OFFICERS should be permitted to frustrate it's function. Collaboration between counsel and the press as to information affecting the fairness of a criminal trial is not only subject to regulation but is highly censurable and worth of disciplinary measures".

Therefore in conclusion of my arguments for GROUND THREE, I believe that I am entitled to relief under the Supreme Court cases of Sheppard, and Estes. Both of these cases dealt with Pretrial publicity which Judge Howe who was the trier of fact, and Judge Cadigan who was the postconviction court, as well as the Attorney General all failed to recognize, and have been clearly established Federal law for more than 40 years. Both of these cases would prohibit a Federal Prosecutor from taking part in any pretrial "reenactment". Mr. Norman should be held to the same standard.

In addition, I also believe that I have met the two prong burden for Ineffective Assistance of Counsel as discussed in Strickland v. U.S., 104 S.Ct. 2052, (1984). I also believe that I have shown how Appellate Counsel (Mr. Greer) had failed to meet the criteria set out in Evitts v. Lucey, by the U.S. S.Ct. when they said:

"The Fourteenth Amendment guarantees a criminal appellant pursuing a first appeal as of right certain minimum safeguards necessary to make that appeal adequate and effective. See Griffin v. Illinois, 351 U.S. 12, 20, 76 S.Ct. 585, 591 (1956)... First Appeal as of right is not adjudicated in accord with due process of law if appellant does not have effective assistance of attorney. U.S.C.A. Const. Amends. 6 and 14."

I am avering that Mr. Norman's appearance in his Official Capacity supported what the hired actors portrayed to the television audience, and that these actors had performed to a script that they were given. This concludes my reasoning as to GROUND THREE.

Mr. Norman's voluntary appearance and his Witness in a fictitious reenactment on National T.V. prior to trial was a Denial of Due Process, and the right to a fair trial as is guaranteed to me by the Fifth, Fourteenth Amendments as well as provisions of the Sixth Amendment and the Maryland Constitution as well.

1 want to, fine. My biggest concern is getting this  
2 Defendant back to stand trial.

3 I quizzed him about the, the percentage of  
4 success they had in such cases and I believe he told me  
5 somewhere in the neighborhood of 60 percent. He asked me  
6 if I'd be available to discuss this matter with, you know,  
7 the, the actual production people. Said sure. At some  
8 time thereafter I met an individual whose name is escaping  
9 me. He actually flew in from California. He was touted  
10 as a director. He sat down with me. He kind of explained  
11 how they go about things and specifically told me they  
12 don't script stuff. I asked him that question, 'cause I,  
13 I thought if he was ultimately going to be on television,  
14 I didn't want to look really, really stupid. Just  
15 moderately stupid was okay. Said they don't do scripts;  
16 they would just interview me, and then at some point in  
17 time if they were going to use, you know, whatever I had  
18 to say, they would tout put it on, you know, put it on  
19 television.

20 Sometime thereafter, your Honor -- again, I  
21 don't remember the days I was told to appear to a house  
22 they actually rented in Timonium -- I went up there, sat  
23 down. He asked me a bunch of questions. They videotaped  
24 it. The next thing I knew it was on the air. But I never  
25 contacted them.

9X HIBIT - 9

1 Q. Now, did, did the producers or the director  
2 of, of the show misrepresent anything that you told them?

3 A. Anything I told them?

4 MR. PATE: Objection.

5 Q. (MR. ANELLO) Yes.

6 MR. PATE: Objection.

7 THE COURT: Sustain.

8 Q. (MR. ANELLO) Did the picture on the show  
9 fairly and accurately portray what you told them?

10 A. You mean what I said?

11 Q. Yes.

12 A. What you saw on the television with me  
13 speaking? What I said on television with me speaking?

14 Q. That's all I'm asking.

15 A. No.

16 Q. And you consented to be there?

17 A. Yes.

18 Q. Okay. Did you obtain the approval and  
19 consent of Sandra O'Connor before you went on the show?

20 A. Absolutely.

21 Q. And she gave her permission for you to be on  
22 the show?

23 A. That's correct.

24 Q. You do admit that you had no knowledge of how  
25 the show was going to be depicted, other than what you

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1 said?

2 A. I don't know what you mean by that. You  
3 ask --

4 Q. Did you have any knowledge -- we just saw a  
5 depiction of the show, of, of, on, of this, this scene of  
6 events, the re-creation of the assault on Mr. Hogg. You  
7 just saw that in court?

8 A. Yes.

9 Q. Okay. Did you have any role in the depiction  
10 of those events?

11 A. None, whatsoever.

12 Q. Okay. Prior to appearing on the show did you  
13 have involve, were you involved in any screening of the  
14 reenactment of these events?

15 A. None, whatsoever. There was no, there was no  
16 rehearsal. I mean, it was show up, answer questions.

17 Q. Okay.

18 A. I wasn't even there when Mr. Hogg was being  
19 interviewed. And I remember seeing Rodericks at this  
20 house they rented, but I wasn't present while anybody was  
21 being interviewed.

22 Q. So you went on the show and stated your  
23 piece, which is fairly and accurately represented, what,  
24 what we just saw, not knowing what other people were  
25 telling Unsolved Mysteries?

9X HIBIT-8

1 A. That's correct. Never asked me to render --

2 Q. Okay.

3 A. -- opinion about the facts of the case.

4 Q. Okay. Did you have any, did, did the, either  
5 Mr. Hogg or Miss Smith contact you to seek your advice as  
6 to whether they should appear on the show or not?

7 A. They didn't contact me asking me that  
8 question, specifically. They did at some point in  
9 preparation for whatever was going to happen with the  
10 show. They actually called me and said they, they were  
11 contacted by this gentleman named Selby, and then the  
12 other guy who's, who was the director -- I don't remember  
13 his name -- and did I see any problem with it. And I told  
14 him, and if you're asking me in terms of prosecution, no.  
15 I mean, as long as you tell the truth, I've got no problem  
16 with it in terms of prosecution. And then I went on to  
17 explain to them I've got no control over what you folks  
18 do, anyway.

19 Q. Did they ask for your permission to be on the  
20 show?

21 A. No, they did not. I couldn't give it one way  
22 or the other.

23 Q. Did you receive any, did you receive any  
24 economic reward for going on the show?

25 A. I got a baseball hat says Unsolved Mysteries

9X HIBIT-9



1 on that.

2 Q. All right.

3 A. Had to fight for that.

4 Q. Okay. You never got any, any expense money  
5 or any- -

6 A. Nothing, whatsoever.

7 Q. Okay. And so you, you saw on the depiction  
8 of the show a recreation where I believe it was Mr.  
9 Shaffer is holding a handgun to the back of the head of,  
10 of the victim, Mr. Hogg?

11 A. Yes, I did say that. (SEE THE INFORMATION)

12 Q. Okay. Throughout the police reports and in  
13 your own allegations in terms of the, the indictment,  
14 isn't it true that that's never been alleged?

15 MR. PATE: Objection.

16 THE COURT: Sustain. (frown)

17 Q. (MR. ANELLO) In regard to the Sunpapers  
18 article that was quoted around the time of the arrest,  
19 August 29, '97, done by Miss Melodie Simmons, did those  
20 statements there made by you, that force and effect kind  
21 of made my day and that guy needs to go to jail, is that  
22 accurately and fairly represent what you told Miss Simmons  
23 in the article appearing in the Baltimore Sun on August  
24 29th, 1997?

25 A. Somewhat. They're out of context. The

9X HIBIT-10